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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,228	10/16/2003	Steven D. Culhane	02-200-US2	9854
34704	7590	04/11/2005		EXAMINER
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				HOEY, ALISSA L
			ART UNIT	PAPER NUMBER
				3765

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/687,228	CULHANE, STEVEN D.
Examiner	Art Unit	
Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 January 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 10-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 10-19 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### Response to Amendment

1. This is in response to amendment filed on 01/11/05. Claims 10-19 are pending in this application and are finally rejected below.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for defining a stretch fabric material, does not reasonably provide enablement for defining a non-stretch fabric material. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to define the invention commensurate in scope with these claims. The specification does not define what the non-stretch material is made out of. All fabrics have some degree of stretch and without providing examples of the non-stretch material the invention is not enabled.

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kratz (US 4,722,099).

In regard to claims 10-13, Kratz provides a garment having a front portion and a rear portion (figures 2 and 3). A pair of arms being joined to the front and rear portions (figures 2 and 3, identifiers 62 and 64). Each of the arms having an elbow portion formed from a mesh fabric material and other portions from an artificial leather or leather fabric material (figures 2 and 3, identifiers 88, 62, 64, 92, 94, 90: column 1, lines 63-68 through column 2, lines 1-2). Additionally, the outer elbow portions are formed from a mesh fabric material based upon the outer elbow locations as illustrated by the instant Application (see figure 3, portion 92 and 94). The rear portions having at least one portion formed from a mesh fabric material (figure 3, identifiers 36, 38, 70 and 72: column 5, lines 17-53). The rear portions having a first and second side portions and a central portion wherein each of the first and second side portions are formed from a stretch fabric material (figure 3, identifiers 36, 38, 70 and 72; column 5, lines 17-53). The central portion is formed from an artificial leather or a leather material (figure 3, identifiers 102: column 1, lines 63-68 through column 2, lines 1-3). It is inherent that the mesh of Kratz has stretch since, Kratz uses flexible cloth mesh in the shoulder vents which is diagramed as the same mesh used in the elbows, underarms and sides of the back vents in the jacket, flexible cloth mesh has stretch. It is further inherent that the artificial leather used in the body of the garment is non-stretch. Artificial leather's are made by a woven base to which a solid and expanded vinyl substance is added making it "non-stretch".

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Blauer et al. (US 5,593,754).

Kratz provides a garment as described above in claim 10. However, Kratz fails to teach a liner within the garment formed from a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer. Blauer et al. provides a garment having a liner formed of a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer (figures 3 and 4, identifiers 22, 24, 30, 32 and 34: column 8, lines 5-19).

It would have been obvious to have provided the outer garment of Kratz with the liner of Blauer et al., since the dual liner would provide the outer garment of Kratz with superior breathability, water fastness and stretchability keeping the user dryer, cooler, more comfortable.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Lipson (US 2,002,955).

Kratz provides an outer garment as described above in claim 10. However, Kratz fails to teach the outer garment having a hood that is detachable and collapsible to the outer garment.

Lipson provides an outer garment having a hood that is detachable and collapsible to the outer garment (figures 1-6, identifiers 2, 10, 12, 6 and 8: page 1, column 2, lines 12-45).

It would have been obvious to have provided the outer garment of Kratz with the hood of Lipson, since the outer garment of Kratz having a detachable and collapsible hood would provide the user with a hood that can protect the wearer's head from the elements and can also be detached and stored when not needed by the wearer.

#### ***Response to Arguments***

9. Applicant's arguments filed 01/11/05 have been fully considered but they are not persuasive. Applicant's remarks have been reviewed by the Examiner and detailed below.

I) Applicant argues that it would have been well known to one having ordinary skill in the art to define a "non-stretch fabric material".

Examiner disagrees since the term "non-stretch fabric material" without giving any examples of the "non-stretch fabric material" makes it unclear and indefinite to determine what fabric material is being used when reading the disclosure. The terms stretch and non-stretch when discussed as fabric properties are very indefinite/broad terms. The stretch and non stretch properties can be based upon many different needs

and variables. The disclosure omits properly defining the term non-stretch relating to fabric materials and is therefore properly rejected under 112 2<sup>nd</sup> paragraph.

II) Applicant argues that Kratz fails to teach an outer elbow portion formed of a non-stretch fabric material.

Examiner disagrees since Kratz teaches the outer elbow portions formed of an artificial leather or leather fabric material (column 1, lines 63-67). Artificial leather is non-stretch based on it's construction. Artificial leather's are made by a woven base to which a solid and expanded vinyl substance is added making it non-stretch. Artificial leathers are well known and used in the apparel arts, especially in garment articles. Further, it is well known in the apparel arts how artificial leather is made and that it's construction makes it non-stretch.

III) Applicant argues that the inner elbow portions of Kratz are not made of stretch fabric material.

Examiner disagrees since Kratz teaches mesh inner elbow portions (see identifiers 92, 94 of figure 3). The mesh portion of the shoulder vents of Kratz is a flexible cloth mesh. This shoulder vent mesh is illustrated as the same mesh as inner elbow portions in the figures. Kratz does not ever indicate that the mesh portion of the inner elbow is different than that of the shoulder vents and since it is disclosed in the figures as the same mesh as that of the inner elbow portions and is therefore inherently stretch.

IV) In response to Applicant's argument that artificial leather is not non-stretch, it has been held that a claim is anticipated if each element of the claim is found, either

expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789. In this case, it is well known to one having ordinary skill in the apparel arts what artificial leather is made out of and that it's material components create it's non-stretch properties.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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